Filed 10/2/03 In re Sean S. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re SEAN S., a Person Coming Under the Juvenile Court Law.	B162362 (Super. Ct. No. FJ19605)
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. SEAN S., Minor and Appellant.	

APPEAL from the judgment of the Superior Court of Los Angeles County. Clifford Klein, Judge. Reversed and remanded.

Ellen M. Matsumoto, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter and Margaret E. Maxwell, Deputy Attorneys General, for Plaintiff and Respondent.

Sean S. appeals from the court's order placing him with the California Youth Authority. We reverse and remand for resentencing.

FACTS AND PROCEDURAL BACKGROUND

In April 1998, the People of the State of California filed a petition under Welfare and Institutions Code section 602 against then 13-year-old Sean S. alleging he had robbed a convenience store at knife point. (Pen. Code, § 211, 12022, subd. (b)(1).) Sean admitted the allegation, and the court placed him in a community detention program.

In March 2001, the People filed another section 602 petition against Sean alleging he had unlawfully taken a vehicle. (Veh. Code, § 10851, subd. (a).) Sean admitted the allegation. The court put him in long-term camp community placement. While at camp, he violated the terms of his probation by spitting in a probation officer's face, fighting with another student, and not earning good citizenship grades.

Based on his probation violations, the court ordered Sean's placement with the California Youth Authority. In setting Sean's maximum term of confinement, the court imposed five years for the April 1998 robbery petition plus eight months for the March 2001 unlawful taking petition. During the sentencing hearing, the following colloquy occurred among counsel and the court: "THE COURT: [T]he maximum period of confinement, I believe, Ms. [deputy district attorney] is . . . [¶] [Deputy district attorney]: We're going to have to – the last court order that imposed time said that they were not going to aggregate that time. I think the court has – [¶] THE COURT: *I don't think the court has authority to make the decision.* The maximum term under law is five years, eight months? [¶] [Deputy district attorney]: Yes. The base term is five years for the robbery . . . . He was sentenced on that on . . . 4/16/98. That's five years. And then we have one third of the mid term which is the petition that was filed March 14 of 2001, [for unlawful taking of a car]. That came out to five years, eight months." (Italics added.) The court thereafter ordered Sean's placement with the youth authority for a period not to exceed five years and eight months. This appeal followed.

DISCUSSION

The parties agree the trial court had discretion not to aggregate the terms of Sean's confinement under the two petitions. (*In re Jesse F.* (1982) 137 Cal.App.3d 164, 168-170; *In re Richard W.* (1979) 91 Cal.App.3d 960, 982.) Sean contends the court did not understand its discretion. In support of his contention, he cites the court's comment that it lacked "authority to make the decision" when the prosecutor noted a previous court had not aggregated his periods of confinement.

Respondent concedes Sean's interpretation of the court's comment is plausible. Respondent nonetheless suggests, however, that the court's comment, when viewed in context, was merely an imprecise description of the court's sentencing decision. Based on Sean's mental health problems and failure in less restrictive environments, respondent argues the court believed the only proper disposition was not to aggregate. Hence, the court's comment about lacking authority was simply a loose way of referring to the court's limited options given appellant's past.

We have carefully reviewed the appellate record. Our review does not illuminate what the court meant by lacking authority. We therefore remand to permit the court to clarify the reasons for its sentencing decision, thus giving it the opportunity to dispel any lingering suspicion that it may have mistakenly believed it lacked discretion in the matter. (See *Richards, Watson & Gershon v. King* (1995) 39 Cal.App.4th 1176, 1180 [failing to perceive and exercise discretion is itself an abuse of discretion].) Although we are remanding, we do not necessarily reject respondent's argument that the court was trying to help Sean get the psychiatric treatment the court believed he needed; to the contrary, if that was the court's reasoning, it appears to be well within the bounds of a reasonable exercise of discretion.

DISPOSITION

The order is reversed and the matter is remanded for resentencing.

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RUBIN, J.

We concur:

COOPER, P.J.

BOLAND, J.